



UNITED STATES PATENT AND TRADEMARK OFFICE

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**COPY MAILED**  
**JAN 06 2009**

**OFFICE OF PETITIONS**

In re Application of :  
Lewis et al. : DECISION ON PETITION  
Application No. 09/905,157 :  
Filed: July 12, 2001 :  
Atty Docket No. 00016-020001/ :  
CIT3240 :

This is in response to the REPLY AND PETITION FOR WITHDRAWAL OF ABANDONMENT OR REVIVAL FOR UNINTENTIONAL ABANDONMENT filed August 25, 2008. This also responds to the alternative PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed August 25, 2008.

The petition under 37 CFR § 1.181 is **DISMISSED**.

The petition under 37 CFR § 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to reply to the Office letter mailed March 27, 2008. The Notice Regarding Drawings set a two-month time period from the mailing date of the Notice for applicant to correct drawing informalities. This two-month period was non-extendable. No reply received, the above-identified application became abandoned on May 28, 2008. A courtesy Notice of Abandonment was mailed on August 21, 2008.

In response, applicants filed the instant petition. Applicants respectfully submit that they relied upon the indications of the Office (on at least six (6) occasions) that the drawings pending in the application were acceptable or providing no indication at all and accordingly request withdrawal of the Notice of

Abandonment or in the alternative Revival for Unintentional Abandonment.

**ON PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

Applicants' arguments have been considered and it is concluded that withdrawal of the holding of abandonment is not warranted. Applicants do not dispute that they did not respond to the Notice Regarding Drawings. In this instance, there is actually no dispute as to whether the application is abandoned. The application became abandoned for failure to timely file corrected drawings as required by the Notice Regarding Drawings mailed March 27, 2008. Applicant received the Notice. There is no question that they did not respond to the requirement set forth in the Notice. Regardless of the correction of a requirement, to avoid abandonment applicant must take action within the set period. Applicant cannot merely allow the period to expire without taking any action and thereafter, question the correction of the Notice.

Moreover, the fact that the Notice of Allowability did not require drawings is not dispositive. Nor is the fact that other Office actions may have indicated that the drawings were acceptable. Just because the examiner does not object to the drawings in any particular paper does not mean that he/she cannot later set forth an objection or that another component of the Office cannot set forth a requirement with respect to the drawings. The record is clear that, in this instance, the Office sent applicants a Notice which specified corrections to the drawings and which clearly stated that "Failure to take corrective action within the set period will result in abandonment of the application." Applicants did not take action within the set period. Under the circumstances, it is concluded that this application is properly regarded as abandoned. Withdrawal of the holding of abandonment is not warranted.

Consideration now turns to the alternative petition to revive under 37 CFR 1.137(b).

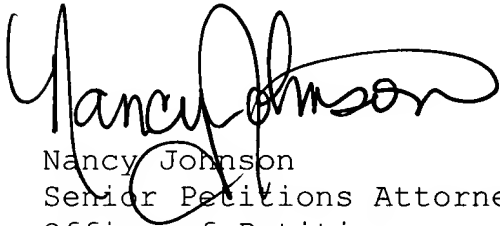
**ON PETITION TO REVIVE**

The requirements of 37 CFR 1.137(b) have been satisfied. The petition includes the required reply in the form of submission of drawings; payment of the petition fee set forth in 37 CFR

§ 1.17(m); and the required statement of unintentional delay.  
No terminal disclaimer is required.

The Office of Data Management has been advised of this decision.  
The application is, thereby, forwarded for consideration of  
response to the Notice Regarding Drawings, the drawings  
submitted on petition filed August 25, 2008.

Telephone inquiries related to this decision should be directed  
to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" and last name "Johnson" clearly distinguishable.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions